BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DARYL J. MYERS	)	
Claimant	)	
	)	
VS.	)	
	)	
EXACTA MACHINE INC.	)	
Respondent	)	Docket No. 1,036,115
	)	
AND	)	
	)	
FEDERATED MUTUAL INS. CO.	)	
Insurance Carrier	)	

ORDER

Claimant requests review of the September 27, 2007 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ) found that claimant failed to sustain his burden of proving he suffered a work-related injury on June 23, 2007. Thus, benefits were denied.

The claimant requests review of this decision alleging the ALJ's reliance on the opinions of Dr. Richard E. Steinberger was misplaced as he did not have an accurate history of claimant's injury. And based upon the other physician's opinion, that of Dr. Pedro Murati, claimant's injury is compensable. Claimant asks the Board to reverse the ALJ's Order.

Respondent argues the ALJ's Order should be affirmed in all respects. Respondent contends Dr. Steinberger, a urologist, was the more appropriate physician to evaluate claimant's injury and because he has concluded that claimant's present claimants are attributable to his earlier vasectomy rather than any work-related event, the ALJ was correct in denying claimant benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Undersigned Board makes the following findings of fact and conclusions of law:

There is no dispute as to the underlying facts surrounding claimant's claim. Claimant is employed as a receiving manager and on Saturday, June 23, 2007 he was performing some outdoor maintenance on respondent's premises. As he attempted to move a pallet he felt a "pull" in his left testicle and groin area, along with a sense of nausea. This was not the first time this had happened. In April 2006, a similar thing happened when claimant was lifting a bar at work. In the earlier accident, he was treated conservatively and released to return to work.

Following the June 23, 2007 accident, claimant rested a moment then decided to go home early. He sought treatment from his family physician the following Monday and although he was taken off work, his symptoms did not subside. He was ultimately referred to two physicians, the last being Dr. Steinberger, for evaluation.

Dr. Steinberger, both a urologist and a surgeon, diagnosed claimant with "postvasectomy syndrome" as well as "epididymal pain" and "blowout granulomas from the vasectomy". Dr. Steinberger's office notes do not make specific note of the June 23, 2007 accident, but they do reference a history of groin pain. He also reviewed the notes from those physicians who saw him earlier.

Dr. Steinberger offered claimant surgery in order to address his condition and this was performed on July 20, 2007. There was an additional hospital admittance due to complications in August 2007.

Thereafter, claimant was examined by Dr. Murati, at the request of his lawyer. Dr. Murati, who is not a urologist, diagnosed claimant with a "groin pull" resulting in surgery, a condition which he attributed to the June 23, 2007 accident.

Respondent's carrier contacted Dr. Steinberger and asked some follow up questions with respect to claimant's symptoms and the need for surgery. Dr. Steinberger responded by saying "the reported lifting accident on 6/23/07 has little barring [sic] to the problem for which I saw him". He went on to explain that claimant's left epididymal pain can easily be explained on the basis of his previous vasectomy and that the resulting surgery would have been necessary whether he had the lifting accident or not. He also stated that the lifting accident "most likely did not aggravate his chronic left epididymal pain since, once again, his pain can be explained on the basis of post-vasectomy changes."[1]

[1] P.H. Trans., Resp. Ex. 1 (Dr. Steinberger's Sept. 24, 2007 letter report).

The ALJ expressly relied upon Dr. Steinberger's opinions and concluded that claimant had failed to establish that his June 23, 2007 accident resulted in a work-related injury. This member of the Board has considered the evidence within the record, including the parties' briefs and finds the ALJ's Order should be affirmed.

In order for a claimant to collect workers compensation benefits he must suffer an accidental injury that arose out of and in the course of his employment. The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when it is apparent to the rational mind, upon consideration of all circumstances, that there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.[2]

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.[3] The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.[4]

Here, claimant had his vasectomy 11 years ago. Since that time, he has apparently developed some complications due to that surgery. Although the earlier event in April 2006 was treated as a muscular problem, the accident in June 2007 was, according to Dr. Steinberger, related to his vasectomy and not to his work activities. Curiously, while Dr. Murati had the benefit of Dr. Steinberger's records, along with those of claimant's other physicians, he concluded claimant had a "groin pull". While it is possible that the June 23, 2007 accident could have aggravated claimant's post vasectomy syndrome thus resulting in a compensable injury, that is not Dr. Steinberger's opinion. And like the ALJ, this member of the Board is more persuaded by the opinions of Dr. Steinberger, a urologist and surgeon, over those expressed by Dr. Murati. Accordingly, the ALJ's Order is affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.[5] Moreover, this review

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[2] *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

[3] *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984)*; Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

[4] *Hanson v. Logan U.S.D. 326*, 28 Kan. App.2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App.2d 510, 949 P.2d 1149 (1997).

[5] K.S.A. 44-534a.

on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge John D. Clark dated September 27, 2007, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November, 2007.

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BOARD MEMBER

c: John L. Carmichael, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge